IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 338 of 2000.

Judgement reserved on: 25.10.2007.

Date of decision: 26.10.2007.

State of H.P. ….. **Appellant.**

Vs.

Sher Singh …. **Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. M.L.Chauhan, Addl. Advocate General.

For the Respondent : None.

Kuldip Singh, Judge.

This is an appeal against the judgement of acquittal, dated 21.11.1997, passed by the learned Judicial Magistrate Ist Class, Court No. 2, Mandi, in case No. 36/II of 1997 in FIR No. 128/95, under Sections 323, 341, 354 and 506 IPC.

2. The allegations against respondent Sher Singh are that on 9.7.1995, PW 2 complainant was returning to her home at about 4 P.M., the respondent intercepted her and pressed her breasts with an intention to outrage her modesty. On raising alarm by the complainant, Khub Ram and Maya Ram came there and respondent fled away from the spot. The matter was reported to the police and

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Whether the reporters of the local papers may be allowed to see the Judgment?

after conclusion of the investigation, challan was put up against the respondent and he was charged, under Sections 323, 341, 354 and 506 IPC to which he pleaded not guilty and claimed trial.

3. The prosecution has examined six witnesses. The statement of the respondent-accused was recorded, under Section 313, Cr.P.C., he pleaded his innocence and he examined DW 1 Sunder Singh in defence. The trial court acquitted the respondent-accused, hence this appeal.

4. I have heard learned Additional Advocate General and gone through the record. PW 1 Dr. Ram Nath has stated that he medically examined the complainant on 10.7.1995 at 8.55 A.M. and found seven scratches on her chest/ sternum. In cross examination, he has stated that such injuries are possible by falling on bushes. PW 2 is the complainant, who has stated that on 9.7.1995, at 4 P.M. she was returning to her home, the respondent stopped her and caught hold her from her breasts. She raised alarm and on hearing her cries, Khub Ram and Maya Ram came there and respondent ran away from the spot. In the process, her shirt was torn. She suffered abrasions on her breasts. The respondent threatened her with dire consequences. In cross-examination, she has stated that at that time Sunder Singh was accompanying the accused-respondent. She has admitted that while reporting the matter she did not disclose the name of Sunder Singh. The accused-respondent caught hold her for about half an hour. She denied the suggestion that Maya Ram and Khub Ram worked with her husband. She has stated that she was not aware whether accused- respondent lodged a report against her

husband. She denied that because of enmity with the accused-respondent he has been implicated in a false case.

5. PW 3 Maya Ram has stated that complainant and accused-respondent were having a scuffle on 9.7.1995. The accused-respondent was holding the complainant from her breasts. In cross-examination, he has admitted that he was working with the husband of the complainant. He has stated that he was not aware whether Sunder Singh was with Sher Singh respondent at that time. He admitted that he did not actually go to the spot and the police recorded his statement in Police Station. PW 4 Duni Chand and PW 5 Netar Singh are formal witnesses. PW 6 Hans Raj is the Investigating Officer.

6. DW 1 Sunder Singh has stated that about two years ago, he was crossing the bazaar where he met Sher Singh respondent, on the way complainant met them, who stopped Sher Singh respondent. They had a talk for about two minutes, thereafter the complainant left the place. He and Sher Singh respondent proceeded towards their homes. No scuffle or other incident took place in between Sher Singh and the complainant. There were 60-70 persons on the spot at that time.

7. The prosecution story is highly improbable. The complainant has alleged that accused caught hold her from her breasts for about half an hour. PW 1 Dr. Ram Nath examined the complainant, but he has not proved any MLC of the complainant, even though one MLC Ex. PW 1/A is on record. It is not the case of prosecution that complainant was examined by some other doctor

also. The complainant has admitted the presence of Sunder Singh on the spot at the time of alleged occurrence, Sunder Singh who appeared as DW 1 has stated that nothing happened in between the complainant and respondent, as alleged by the prosecution. He has stated that there were 60-70 persons on the spot at that time.

8. The complainant has stated that on hearing her cries Khub Ram and Maya Ram came on the spot. The prosecution has examined Maya Ram as PW 3. In his statement, PW 3 has stated that scuffle took place in between Sher Singh and the complainant. He denied that Sunder Singh was with the accused-respondent at the time of alleged occurrence, whereas it is the specific case of the complainant that Sunder Singh was present on the spot. Maya Ram has admitted that he was working with the husband of the complainant. In his cross-examination, he has admitted that he did not go to the spot. Therefore, statement of PW 3 Maya Ram cannot be relied in favour of prosecution. The respondent has denied the case and from the trend of the cross-examination, he has taken the defence that since at one point of time he lodged a report against the husband of the complainant, therefore, he has been falsely implicated in the case. Khub Ram the other alleged eye witness has not been examined.

9. The prosecution has failed to prove the case beyond reasonable doubt against the respondent. The complainant has put forward highly improbable story that respondent caught hold her from breasts for about half an hour. There is no corroboration of prosecution story by independent witnesses. The MLC Ex. PW 1/A

has not been proved by PW 1 Dr. Ram Nath, who examined the complainant. The trial court has appreciated the material on record in a right perspective and has taken a possible view. No case has been made out to take contrary view from the material on record. Hence, no interference is called for. The appeal is accordingly dismissed. The bail bonds of the respondent are discharged.

October 26, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**